

MEMORANDUM

TO: Mary Keller, Stan Wedel, Frank Briganti

COPY TO: LO-88-26

FROM: Sarah Woelk *SW*

DATE: March 11, 1988

SUBJECT: Surplus Funds from Seminars

REPLY BY:

PLEASE

☐ REPLY☐ HANDLE☐ SEE ME☐ APPROVE☐ RETURN☐ FYI

You asked me to look at the following two questions:

1. Can monies obtained through registration fees from AG sponsored Conferences be used for expenses related to AG staff training?

2. Can monies obtained through registration fees from AG sponsored Conferences be used for capital outlay, i.e. purchase of equipment which could be used both at future Conferences as well as in staff training (e.g. a video camera)?

Article 6252-11a, V.T.C.S., gives state agencies authority to conduct and to pay for employee training and education. Apparently there is no express authority for state agencies to pay for or conduct training or education for employees or the general public. (An appropriations act rider cannot authorize a state agency to do something that it has no authority to do under general law.) However, Attorney General Opinion M-619 (1970) held that state agencies do have implied authority to sponsor a seminar "when the seminar bears a reasonable, substantial and direct relationship to the duties and functions of the office." The opinion also implies that an agency conducting a seminar may collect money for defraying the costs of the seminar but that it may not charge a fee--in other words, that it shouldn't be collecting any surplus. I think that is correct since there is a well-established rule that state agencies can't charge "fees" without express authority to do so.

The rider you ask about provides:

APPROPRIATION OF COLLECTIONS FOR SEMINARS AND CONFERENCES. All funds collected for the reimbursement of costs associated with the conducting of seminars, conferences or clinics which directly relate to the legal responsibilities and duties of the agency and which are for the purposes of education, training, or informing employees or the general public are hereby appropriated for the necessary expenses incurred in conducting the seminar. Provided, however, all applicable laws, and rules and regulations for the acquisition of goods and services for the state shall apply to such expenditures. Any remaining balances from such collections as of August 31, 1987 are hereby

reappropriated for the same purpose for the biennium beginning September 1, 1987.

General Appropriations Act, Acts 1987, 70th Leg., ch. 78, 2nd C.S., art. V, §83 at 1130. At least some of the language in that rider suggests that the rider contemplates that charges for seminars are for reimbursement only, not for profit. The reference to unexpended balances in the last sentence of the rider, however, suggests that the money collected from a seminar may exceed the money spent to conduct it and that the rider was intended to permit "recycling" of money collected from seminars.¹ A rider, however, cannot authorize an agency to collect fees that it is not otherwise authorized to collect.

Both the legal problem and the apparent internal inconsistency in the rider can be resolved by interpreting the reference to unexpended balances as a recognition of the fact that there will usually be a surplus or deficit even if charges are intended to approximate expenses. Thus, the rider can be interpreted as allowing "recycling" of such surpluses and deficits. I think that it is appropriate for a rider to acknowledge the inevitability of such de minimis surpluses and deficits and to provide a way of dealing with them.

Your first question is whether money collected from one seminar must be used to conduct a seminar of the same type as the seminar for which the money was collected. Once you accept the "recycling" concept, the clear meaning of the rider is that surplus can be used to conduct any kind of seminar that fits within the general description of "education, training or informing employees or the general public." Therefore, I see no impediment to using money collected from a seminar conducted for the general public to be used for a staff training seminar.

Your next question is whether the money collected can be used to purchase items--video cameras, for example--that will be used at a number of seminars, both for staff and the general public. Again, once you accept the recycling concept, it would seem to follow that you can use the money to buy equipment that will be used at more than one seminar and that will be used at different types of seminars.

1. The Appropriations act for the 1986-87 biennium contained an identical rider. General Appropriations Act, Acts 1985, 69th Leg., 3rd C.S., ch. 13, art. V, §89 at 614.

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In conclusion, then, I do not think that the office has authority to set charges for seminars that are calculated to produce more money than is necessary to defray the expenses of the seminar. It is probably inevitable, however, that there will be a small surplus or deficit. The rider you ask about permits you to "recycle" such surpluses and deficits, and nothing in the rider restricts the use of surplus funds to a seminar identical in nature to the seminar at which the surplus funds were collected.